

APPEAL NO. 022649
FILED DECEMBER 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was scheduled for August 14, 2002, but reset to and held on September 24, 2002. The hearing officer determined that the respondent (claimant), who was self-employed, was entitled to supplemental income benefits (SIBs) for the first quarter of eligibility. The appellant (self-insured) appeals, arguing details about what the claimant claimed as business expenses for purposes of computing net income. There is no response from the claimant.

DECISION

We affirm the hearing officer's decision.

We cannot agree that the hearing officer erred in finding that the claimant was entitled to SIBs in meeting the "good faith" requirement for searching for employment through her self-employment. As pointed out in Hartford Underwriters Insurance Co. v. Hafley, 2002 WL 31258009 (Tex. App.-Austin 2002, no pet.), using net income from self-employment as the basis for calculating entitlement to SIBs is a reasonable approach for the Texas Workers' Compensation Commission (Commission) to use. Although the self-insured argues that discretionary or capital items cannot be deducted as work-related expenses, we would note that the Commission is not required to use only those expenses that the Internal Revenue Service would consider as deductible, and it is not unreasonable to allow for the loan expenses of certain capital items in figuring net income from self-employment.

The self-insured argues that "personal" expenses were claimed as business expenses; however, the record does not support that purely personal expenses were deducted. Whether or not there is a "discretionary" element to business expenses was a matter to be considered by the hearing officer in evaluating the reasonableness of the business expenses. The self-insured argues that the hearing officer has required "the carrier" to "pay" start-up expenses; this is a misnomer, as the self-insured is being required to pay SIBs, in the capped amount allowed by the statute. The Appeals Panel is disinclined to sit as a second-tier fact finder, flyspecking the expenses tendered by the claimant to determine if some expenditures could have been acquired cheaper, or were as necessary, in retrospect, to the business as others.

In reviewing the record, we agree that either the documentation or the testimony sufficiently supports the hearing officer's decision, and it is not so against the great weight and preponderance of the evidence so as to be manifestly unfair or unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.).

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez
Appeals Judge